

**IN THE UNITED STATES DISTRICT COURT  
FOR THE NORTHERN DISTRICT OF MISSISSIPPI  
DELTA DIVISION**

**MARK BLACKSON**

**PLAINTIFF**

**VS**

**CAUSE NO. 2:10-CV-169-P-A**

**DESOTO COUNTY, MISSISSIPPI,  
and SHERIFF WILLIAM  
RASCO, INDIVIDUALLY and  
In his official capacity as Sheriff of DeSoto  
County, Mississippi**

**DEFENDANTS**

**MOTION TO DISMISS**

**COME NOW** Defendants, by counsel, and respectfully move this Court to dismiss this case pursuant to *Fed. R. Civ. Proc. 12(b)(1)* & (6) as follows:

**1. SUBJECT MATTER JURISDICTION:** Consistent with Fifth Circuit precedent, this Court lacks subject matter jurisdiction over the Amended Complaint

**2. INDIVIDUAL AND DUPLICITOUS CLAIMS:** There are no individual capacity claims under USERRA. Official claims against Desoto County must also fail, because at best the County is a duplicate party to claims against Sheriff Rasco in his official capacity.

**3. IMPROPER DAMAGE CLAIMS:** Claims for punitive damages and emotional distress damages are not authorized by USERRA. Likewise, injunctive relief is not plausible under the Amended Complaint because there is no issue of irreparable harm.

**NOW, THEREFORE** Defendants pray that upon consideration hereof, the Court enter its order as follows:

(A) That this Court dismiss Plaintiff's Complaint without prejudice for lack of subject matter jurisdiction;

(B) That in the alternative, the Court dismiss Sheriff Rasco (individually), dismiss Desoto County (as duplicitous), and dismiss all claims of punitive damages, emotional distress damages and injunctive relief; and,

(C) That this Court award these Defendants their attorney fees, costs and expenses associated with the defense of the instant civil action pursuant to Rule 11, *Federal Rules of Civil Procedure* and The Mississippi Litigation Accountability Act of 1988, and *Miss. Code Ann.* §11-1-54 (2003).

**RESPECTFULLY SUBMITTED** this 12<sup>th</sup> day of November, 2010.

**DEFENDANTS**

By: /s/ *Daniel J. Griffith*  
Daniel J. Griffith, MS Bar No. 8366  
Attorney for Defendants

Of Counsel:

**GRIFFITH & GRIFFITH**  
123 South Court Street  
P. O. Drawer 1680  
Cleveland, MS 38732  
Phone No. 662-843-6100  
Fax No. 662-843-8153

Tony Nowak, Esq.  
**SMITH PHILLIPS MITCHELL  
SCOTT & NOWAK**  
2545 Caffey Street  
P. O. Box 346  
Hernando, MS 38632  
Phone: 662-429-5041  
E-mail: [tony@smithphillips.com](mailto:tony@smithphillips.com)

**CERTIFICATE OF SERVICE**

I, Daniel J. Griffith, attorney of record for Defendants, do hereby certify that I have this day caused a true and correct copy of the above and foregoing *MOTION TO DISMISS* to be delivered by *VIA ECF FILING* to the following Counsel of Record:

James David Harper, Esq.  
[jdh@jamesharperlaw.com](mailto:jdh@jamesharperlaw.com)  
Richard D. Underwood, Esq.  
[rd@underwoodthomas.com](mailto:rd@underwoodthomas.com)  
*Counsel for Plaintiff*

**DATED** this 12<sup>th</sup> day of November, 2010.

/s/ *Daniel J. Griffith*  
\_\_\_\_\_  
Daniel J. Griffith